

### REMARKS

In the office action mailed December 28, 2009, the Examiner continued to reject the pending claims under 35 U.S.C. § 103 in view of the Robbins reference (U.S. Patent No. 5,916,526), the Skinner et al. reference (U.S. Patent Publication No. 20020155490), the Mainquest reference (U.S. Patent No. 6,534,014) or some combination thereof. After carefully reviewing the cited references, the Applicant believes that the pending claims are neither disclosed nor taught by the cited art. Hence, reconsideration of the-above captioned application in light of the remarks contained herein is now respectfully requested.

After carefully reviewing each of the cited references, the Applicant notes that none of these references, either by themselves or in combination with each other, teach or disclose the concept of a "probe carrier [that] is essentially freely movable in said particular chamber wherein the container is provided with a circular bottom having a surface area which is smaller than the bottom surface area of a well of a standard 24, 96 or 384 well microtiter plate".

More specifically, Robbins uses a conventional 96-well plate and then inserts partitions to subdivide the wells in order to increase the number of problems which can be simultaneously amplified in a standard PCR device (*See, e.g.*, Robbins, Col. 2, Lines 26-31, 36-45, Col. 4, lines 52-57). As a direct result of the inserted partition, Robbins does not have a circular bottom having a surface area which is smaller than the bottom surface area of a well of a 96-well plate as is required by Claim 1. The tubes of Robbins are standard tubes divided by the partition which extends to the bottom of the tube so that the partitions thereby divide a circular container into 4 quarter circle quadrants as is shown in Figures 2 and 3.

Moreover, the original bottom of the tube in Robbins, even before the partition is formed therein, is still *not smaller* than the bottom surface of a standard well plate as required by Claim 1 since the tubes of Robbins are tubes of a standard microtiter plate.

Skinner does not correct these deficiencies. Skinner also does not teach nor disclose the concept of the surface area being smaller than the bottom surface area of a standard 14, 96 or 384-well microtiter plate. Further, there is no *prima facie* case for combining Robbins and Skinner. Skinner is using a particle with a unique identifier as a probe carrier but is using these particles in identifying genetic mutations in a PCR product. However, according to Skinner, the PCR product is provided from elsewhere in and subsequently gets mixed with particles carrying

specific probes (*See, e.g.*, paragraph 68 and 68). Thus Skinner is performing the PCR and hybridization separately. As such there would be no reason to use the particles of Skinner in the well plate for PCR of Robbins.

Mainquist also fails to teach the missing elements. As such none of the references, either by themselves or in combination with each other, teach Claim 1 as it is currently pending. The remaining claims define additional patentable subject matter and are further allowable due to their dependency on Claim 1. The Applicant therefore believes the above-captioned application is in condition for allowance and requests the prompt allowance of the same. Should there be any impediment to the prompt allowance of this application that could be resolved by a telephone conference, the Examiner is respectfully requested to call the undersigned at the number shown below.

*No Disclaimers or Disavowals*

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

**Application No.:** 10/783,409  
**Filing Date:** February 20, 2004

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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